

this paper of Hancock & Mann, endorsed by Dawson & Norwood, had put his name to it as endorser, and passed it for value, could there be a doubt of the right of the assignees to share in the fund? But if instead of doing so, he passed his own notes to Dawson & Norwood in exchange, which notes were endorsed by them, he, Jones, retaining the notes of Hancock & Mann, why should not the parties who receive these notes of Jones be, by substitution, considered as the holders of the notes of Hancock & Mann, and as such entitled to the benefit of the security?

My opinion, therefore, is, that the petitioners, Hopkins & Brothers, and the other parties who hold the paper of Samuel Jones, endorsed by Dawson & Norwood, which paper was given in exchange for the paper of Hancock & Mann, now in the possession of the trustees of Jones, are to be treated as if they held this latter paper, and entitled to dividends of the fund. And when, upon the paper of Jones, the names of Dawson & Norwood do not appear, the same right of substitution exists, when upon that of Hancock & Mann, for which such paper of Jones was given in exchange, Dawson & Norwood are endorsers, the object of the mortgages being to secure Dawson & Norwood.

The Auditor, in his report of the 10th of July, 1849, says that it appears that no part of the paper given by Jones in exchange for the paper of Hancock & Mann, endorsed by Dawson & Norwood, has been paid by Jones, and submits whether any portion of the fund should be assigned to his trustees, Winn & Ross, and whether, as soon as it shall clearly appear how many of the claims filed are really entitled to substitution as exchange paper, they ought not to receive their proportion of the fund, to the exclusion of said trustees.

That these trustees can receive no part of these funds until they shall have paid in whole or in part the notes given by Jones in exchange for those of Hancock & Mann, in their possession, has been already decided. This is not the case of cross paper, given for mutual accommodation, when each party is liable to pay his own. The paper of Hancock & Mann was not to be, nor was it in fact, negotiated by Jones. He held it